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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/042,666	03/17/1998	ALMANTAS GALVANAUSKAS	A7139	5411

7590 05/30/2003

SUGHRUE MION ZINN
MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE N.W.
WASHINGTON, DC 200373202

EXAMINER
LEE, JOHN D

ART UNIT	PAPER NUMBER
2874	

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/042,666	GALVANAUSKAS ET AL.	
	Examiner	Art Unit	
	John D. Lee	2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-33,35 and 36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1,3-28,33,35 and 36* is/are allowed.

6)☒ Claim(s) *29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

This Office action is responsive to the amendment filed on March 18, 2003.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR § 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR § 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR § 3.73(b).

Claims 29-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 23, and 24 of U.S. Patent No. 6,154,310. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims recite an optical wavelength conversion apparatus for ultrashort optical pulses comprising a plurality of the same wavelength conversion channels (each including an optical waveguide with an optical parametric generation portion) of which only one is being claimed herein. Clearly, since the patent claims include a plurality of such channels, a person of ordinary skill in the art would have found a single such channel to have been obvious. As for the recitations in present claims 29 and 30, the person of ordinary skill in the art would have recognized that these limitations are encompassed by the patent claims (as discussed in the patent beginning in column 5, line 24). With respect to claims 31 and 32, in addition to the "plurality of wavelength conversion channels versus a single wavelength conversion channel" rationale just discussed, it would have been obvious to use a more generically defined "optical pulse source generating optical pulses" or "a single laser source generating optical pulses" in the device of

U.S. Patent No. 6,154,310 (rather than the more specifically defined "ultrashort optical pulse source generating ultrashort optical pulses" as set forth in patent claim 1), because the person of ordinary skill would have understood the necessity of using a source producing pulses of whatever length may be required (i.e. if ultrashort wavelength converted pulses are desired, then an ultrashort pulse source is required; if longer wavelength converted pulses are desired, then a source producing longer pulses would be used).

Claims 1, 3-28, 33, 35, and 36 are allowed. Applicant's March 18, 2003, amendment has incorporated subject matter into these claims which was previously identified as being patentably distinct from the prior art. See paper number 25, mailed September 18, 2002.

Applicant's arguments filed March 18, 2003, with respect to claims 29-32 have been fully considered but they are not persuasive. Applicant argues that the Examiner's position as set forth in the double patenting rejection above that the patent claims encompass the limitations now being claimed is improper. Applicant states that the double patenting rejection can only be based on the claims of the patent application and not the specification thereof. This is correct; however, as with all patent claims, the claims are interpreted in light of the specification, and (as here) when the claims are written broadly enough to encompass something that is more particularly explained in the accompanying specification, then that "something" is indeed covered by the claims. The Examiner stands by the position that the already patented claims encompass the limitations being claimed in this application, and the double patenting rejection is entirely appropriate.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and an advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning the merits of this communication should be directed to Examiner John D. Lee at telephone number (703) 308-4886. The Examiner's normal work schedule is Tuesday through Friday, 6:30 AM to 5:00 PM. Any inquiry of a general or clerical nature (i.e. a request for a missing form or paper, etc.) should be directed to the Technology Center 2800 receptionist at telephone number (703) 308-0956, to the technical support staff supervisor (Team 2) at telephone number (703) 308-3072, or to the Technology Center 2800 Customer Service Office at telephone number (703) 306-3329.

John D. Lee
Primary Patent Examiner
Group Art Unit 2874